

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 CARLOS RICARDO BALLESTEROS,

14 Defendant.

CASE NO. CR16-0021-JCC

ORDER

15 This matter comes before the Court on Defendant's motions for compassionate release
16 and to seal (Dkt. Nos. 58, 59), and the parties' motions to file over-length briefs (Dkt. Nos. 57,
17 63). Having thoroughly considered the parties' briefing and the relevant record, the Court finds
18 oral argument unnecessary and hereby DENIES Defendant's motion for compassionate release
19 (Dkt. No. 58), GRANTS his motion to seal (Dkt. No. 59), and GRANTS the parties' motions to
20 file over-length briefs (Dkt. Nos. 57, 63) for the reasons explained herein.

21 **I. BACKGROUND**

22 On December 5, 2015, Defendant was arrested by law enforcement responding to a report
23 of domestic violence. (Dkt. Nos. 48 at 4, 64 at 3.) Over the course of the subsequent
24 investigation, law enforcement discovered 5 pounds of methamphetamine, 300 grams of
25 marijuana, and 74 grams of heroin. (Dkt. Nos. 48 at 4, 58 at 3–4, 64 at 3–4.) On May 3, 2016,
26 Defendant pleaded guilty to possession of methamphetamine with intent to distribute. (Dkt. Nos.

1 31, 32.) The Court sentenced Defendant to 90 months of incarceration followed by five years of
 2 supervised release. (Dkt. No. 55.) Based on Defendant's offense level and criminal history
 3 category, the advisory guideline sentencing range was 121 to 151 months. (Dkt. Nos. 48 at 19,
 4 49 at 1.)

5 Defendant's current projected release date is April 27, 2022. (Dkt. Nos. 58 at 14, 64 at 4.)
 6 He moves for compassionate release under 18 U.S.C. § 3582(c)(1), requesting a reduction in
 7 sentence to time served because of his risk of developing severe illness if he contracts COVID-
 8 19 while incarcerated. (Dkt. No. 58.)

9 **II. DISCUSSION**

10 **1. Motion for a Reduction in Sentence**

11 In general, the Court may reduce a term of imprisonment if (1) "extraordinary and
 12 compelling reasons warrant such a reduction," (2) "such a reduction is consistent with applicable
 13 policy statements issued by the Sentencing Commission," and (3) the Court considers the
 14 section 3553(a) factors. *See* 18 U.S.C. § 3582(c)(1)(A)(i).¹ The defendant bears the burden of
 15 making this showing. *United States v. Holden*, 452 F. Supp. 3d 964, 969 (D. Or. 2020). The
 16 parties dispute whether the Sentencing Commission's relevant policy statement, United States
 17 Sentencing Guidelines ("USSG") § 1B1.13, is presently "applicable." (Dkt. Nos. 58 at 7–8, 64 at
 18 7–8.) While the Ninth Circuit has not directly addressed the issue, four Courts of Appeals have,
 19 holding that the policy statement does not constrain the Court's discretion. *See United States v.*
 20 *Brooker*, 976 F.3d 228, 236 (2d Cir. 2020); *United States v. Gunn*, 980 F.3d 1178, 1180 (7th Cir.
 21 2020); *United States v. Jones*, 980 F.3d 1098, 1101 (6th Cir. 2020); *United States v. McCoy*, 981
 22 F.3d 271, 281 (4th Cir. 2020). Nonetheless, the Court may consider the policy statement in the

23 ¹ As a threshold matter, a defendant must also satisfy 18 U.S.C. § 3582(c)(1)(A)'s
 24 exhaustion requirement by first presenting a request for a reduced sentence to the warden of his
 25 or her facility and waiting 30 days (or exhausting administrative remedies before the 30-day
 26 waiting period expires) before seeking relief from the court. *See U.S. v. Garcia*, 2020 WL
 3839631, slip op. at 3 (W.D. Wash. 2020). Defendant has satisfied this requirement. (See Dkt.
 Nos. 58-4, 64 at 9.)

1 exercise of its discretion. *See Gunn*, 980 F.3d at 1180. The statement recommends that courts not
 2 reduce sentences of individuals who would present a danger to the community upon release.
 3 USSG § 1B1.13(2). The Court finds that to be an appropriate consideration here. *See United*
 4 *States v. Arceneaux*, 830 F. App'x 859 (9th Cir. 2020) (affirming denial of a motion for
 5 reduction in sentence because the defendant was a danger to the community).

6 Health conditions that increase an individual's risk of a severe case of COVID-19 may
 7 constitute extraordinary and compelling circumstances. *See United States v. Cosgrove*, 454 F.
 8 Supp. 3d 1063, 1067 (W.D. Wash. 2020); *United States v. Dorsey*, 461 F. Supp. 3d 1062, 1065
 9 (W.D. Wash. 2020). With a BMI of 40, Defendant is severely obese. (*See* Dkt. Nos. 58 at 4, 58-
 10 1). According to the Centers for Disease Control, this condition increases his risk of developing
 11 severe illness from COVID-19. *See* <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (last updated February 22, 2021). The
 12 Government "acknowledges that there is an extraordinary and compelling reason that allows the
 13 Court to consider whether it should cut short [Defendant's] sentence." (Dkt. No. 64 at 1-2.)
 14 However, because Defendant has failed to demonstrate that he would not present a danger to the
 15 community upon release or that a reduction in his sentence would be consistent with the 18
 16 U.S.C. § 3553(a) factors, the Court need not determine whether his condition, in fact, represents
 17 extraordinary and compelling circumstances warranting a reduction in sentence.

19 In assessing whether Defendant would present a danger to the community upon release,
 20 the Court may look to the nature and circumstances of his underlying offense, the weight of the
 21 evidence against him, his history and characteristics, and the nature of the danger that his release
 22 would pose to any person or the community. 18 U.S.C. § 3142(g); U.S.S.G. § 1B1.13(2). Here,
 23 Defendant has a lengthy criminal history, which includes convictions for rape, assault, assault of
 24 a child, failure to register as a sex offender, and conspiracy to deliver methamphetamine. (Dkt.
 25 No. 48 at 7-12.) Moreover, Defendant committed the offense for which he is presently
 26 incarcerated *while on supervision* for other offenses. (Dkt. Nos. 48 at 12, 49 at 4.) In light of this

1 history, the Court FINDS that Defendant would present a danger to the community upon release.

2 The section 3553(a) factors also weigh against release. These factors include the nature
3 and circumstances of the underlying offense, the need for the sentence imposed, the kinds of
4 sentences available, the applicable sentencing range, pertinent policy statements, and the need to
5 avoid sentencing disparities. *See* 18 U.S.C. § 3553(a). As described above, Defendant has a
6 lengthy criminal history; notably, he committed the instant offense after having already served a
7 144-month sentence for a previous conviction, indicating he had not been rehabilitated following
8 this prior offense. (Dkt. Nos. 49 at 4, 48 at 12.) Further, the Court already imposed a sentence
9 below the guidelines range in this instance. (Dkt. Nos. 48 at 19, 49 at 1.) Therefore, granting
10 Defendant's motion would not promote respect for the law, provide adequate deterrence, or
11 sufficiently protect the public; rather, it would undermine the goals of sentencing.

12 Accordingly, Defendant's motion for compassionate release is DENIED.

13 **2. Motion to Seal and Motions to File Over-length Briefs**

14 Defendant also moves to seal records related to his medical history. (Dkt. No. 59.) The
15 Court starts from the position that “[t]here is a strong presumption of public access to the court’s
16 files.” W.D. Wash. Local Civ. R. 5(g); *see also Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589,
17 597 (1978). To overcome that presumption, a party must show “good cause” for sealing a
18 document attached to a non-dispositive motion and “compelling reasons” to seal a document
19 attached to a dispositive motion. *See Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172,
20 1178-81 (9th Cir. 2006). The Court need not decide whether Defendant’s motion for
21 compassionate release is a dispositive motion because the Court FINDS that, regardless, he has a
22 compelling interest in maintaining his medical records under seal and that interest outweighs the
23 public’s interest in their disclosure. *See Karpenski v. Am. Gen. Life Cos., LLC*, 2013 WL
24 5588312, slip. op. at 1 (W.D. Wash. 2013). Accordingly, the motion to seal is GRANTED.

25 Finally, the parties both move for leave to file overlength briefs. (Dkt. Nos. 57, 63.) The
26 Court finds the requests reasonable, in light of the topics briefed. Accordingly, the motions to file

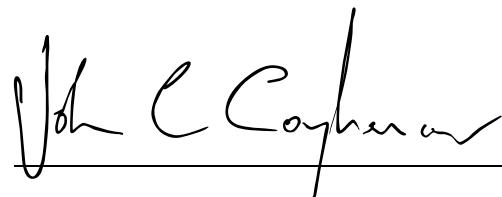
1 overlength briefs are GRANTED.

2 **III. CONCLUSION**

3 For the foregoing reasons, the Court DENIES Defendant's motion for compassionate
4 release (Dkt. No. 58), GRANTS his motion to seal (Dkt. No. 59), and GRANTS the parties'
5 motions to file over-length briefs. (Dkt. Nos. 57, 63.) The Court DIRECTS the Clerk to maintain
6 Document Numbers 60 and 60-1 under seal.

7 DATED this 24th day of February 2021.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE